

**Introduced by Senator Pavley**

February 23, 2009

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An act to amend Sections 1335, 1336, and 1337 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 197, as introduced, Pavley. Domestic violence proceedings: conditional examination of witnesses.

Existing law provides for the conditional examination of a witness by the defendant in all cases and by the people in cases where the punishment may be other than death or if the defendant is charged with a serious felony and there is evidence that the life of the witness is in jeopardy.

This bill would also provide for the conditional examination of a witness by the people or the defendant in a case of domestic violence, as defined, when there is evidence that the life of the witness is in jeopardy; when criminal charges arising out of the same acts have been previously dismissed for specified reasons and refiled; or when there is evidence that a victim or material witness has been or is being dissuaded by any means from cooperating with the prosecution or testifying at trial. The bill would make conforming changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1335 of the Penal Code is amended to  
2     read:

1 1335. (a) When a defendant has been charged with a public  
2 offense triable in any court, he or she in all cases, and the people  
3 in cases other than those for which the punishment may be death,  
4 may, if the defendant has been fully informed of his or her right  
5 to counsel as provided by law, have witnesses examined  
6 conditionally in his or her or their behalf, as prescribed in this  
7 chapter.

8 (b) When a defendant has been charged with a serious felony  
9 *or in a case of domestic violence*, the people or the defendant may,  
10 if the defendant has been fully informed of his or her right to  
11 counsel as provided by law, have a witness examined conditionally  
12 as prescribed in this chapter, if there is evidence that the life of the  
13 witness is in jeopardy.

14 (c) As used in this section, “serious felony” means any of the  
15 felonies listed in subdivision (c) of Section 1192.7 or any violation  
16 of Section 11351, 11352, 11378, or 11379 of the Health and Safety  
17 Code.

18 (d) *If a defendant has been charged in a case of domestic*  
19 *violence and there is evidence that criminal charges arising out*  
20 *of the same acts have been previously dismissed and refiled*  
21 *pursuant to paragraph (2) or (3) of subdivision (a), or subdivision*  
22 *(b), of Section 1387, the people or the defendant may, if the*  
23 *defendant has been fully informed of his or her right to counsel as*  
24 *provided by law, have a witness examined conditionally as*  
25 *prescribed in this chapter.*

26 (e) *If a defendant has been charged in a case of domestic*  
27 *violence and there is evidence that a victim or material witness*  
28 *has been or is being dissuaded by any means from cooperating*  
29 *with the prosecution or testifying at trial, the people or the*  
30 *defendant may, if the defendant has been fully informed of his or*  
31 *her right to counsel as provided by law, have a witness examined*  
32 *conditionally as prescribed in this chapter.*

33 (f) *For the purposes of this section, “domestic violence” means*  
34 *any public offense arising from acts of domestic violence as defined*  
35 *in Section 13700.*

36 SEC. 2. Section 1336 of the Penal Code is amended to read:

37 1336. (a) When a material witness for the defendant, or for  
38 the people, is about to leave the state, or is so sick or infirm as to  
39 afford reasonable grounds for apprehension that he or she will be  
40 unable to attend the trial, or is a person 65 years of age or older,

1 or a dependent adult, *or is a victim or material witness in a case*  
2 *charging domestic violence who has been or is being dissuaded*  
3 *by any means from cooperating with the prosecution or testifying*  
4 *at trial*, the defendant or the people may apply for an order that  
5 the witness be examined conditionally.

6 (b) When there is evidence that the life of a witness is in  
7 jeopardy, *or, in a case of domestic violence, if criminal charges*  
8 *arising out of the same acts have been previously dismissed and*  
9 *refiled pursuant to paragraph (2) or (3) of subdivision (a), or*  
10 *subdivision (b), of Section 1387*, the defendant or the people may  
11 apply for an order that the witness be examined conditionally.

12 (c) As used in this section, “dependent adult” means any person  
13 who is between the ages of 18 and 65, who has physical or mental  
14 limitations which restrict his or her ability to carry out normal  
15 activities or to protect his or her rights, including, but not limited  
16 to, persons who have physical or developmental disabilities or  
17 whose physical or mental abilities have diminished because of  
18 age. “Dependent adult” includes any person between the ages of  
19 18 and 65, who is admitted as an inpatient to a 24-hour facility, as  
20 defined in Sections 1250, 1250.2, and 1250.3 of the Health and  
21 Safety Code.

22 (d) *As used in this section, “domestic violence” means any*  
23 *public offense arising from acts of domestic violence as defined*  
24 *in Section 13700.*

25 SEC. 3. Section 1337 of the Penal Code is amended to read:

26 1337. The application shall be made upon affidavit stating all  
27 of the following:

28 ~~(1)~~

29 (a) The nature of the offense charged.

30 ~~(2)~~

31 (b) The state of the proceedings in the action.

32 ~~(3)~~

33 (c) The name and residence of the witness, and that his or her  
34 testimony is material to the defense or the prosecution of the action.

35 ~~(4)~~

36 (d) That the witness is about to leave the state, or is so sick or  
37 infirm as to afford reasonable grounds for apprehending that he  
38 or she will not be able to attend the trial, or is a person 65 years  
39 of age or older, or a dependent adult, or that the life of the witness  
40 is in jeopardy, *or that the witness is a victim or material witness*

1 *in a domestic violence case who has been or is being dissuaded*  
2 *by any means from cooperating with the prosecution or testifying*  
3 *at trial, or that the witness is a victim or material witness in a*  
4 *domestic violence case and criminal charges arising out of the*  
5 *same acts have been previously dismissed and refiled pursuant to*  
6 *paragraph (2) or (3) of subdivision (a), or subdivision (b), of*  
7 *Section 1387.*

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